



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Goran SUNDHOLM

Serial No.: 09/297,256

Group No.: 3752

Filed: April 28, 1999

Examiner: C. Kim

For: FIRE FIGHTING APPARATUS

Attorney Docket No.: U 012229-2

Commissioner for Patents
P. O. Box 1450
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Brief
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REPLY BRIEF:

The following (in triplicate) is Appellant's reply to the Examiner's Answer of June 25, 2003.

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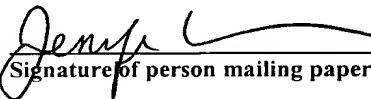
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Response to Response to Argument

First Issue

Claim 1 has been distinguished from the cited Naumann patent on the basis of the claimed "... extinguishing medium source consisting essentially of a long tube (2;2') constituting part of the tube system" "... for leading extinguishing medium to the spray heads ...," as compared to "... container 13 for holding the liquid to be sprayed ..." in the Naumann patent (column 1, lines 63 & 64).

In the patent, the extinguishing medium source is a container and not a tube. A container is described and shown in words and pictures. The words and pictures are of a container and not a tube.

A tube 15 is also described and shown in words and pictures in the Naumann patent. The container 13 does not look like the tube 15 and is not described as a tube, as appears only in the Examiner's Answer.

Therefore, the Naumann patent is clear. There is a gas compression tube 15 and a liquid holding container 13 that are different in both words and pictures.

Where a patent is clear, as here, extrinsic definitions like The American Heritage Dictionary newly cited at page 5 of the Examiner's Answer should not be considered. In determining the meaning of a claim, one should have recourse to the specification and, only if needed, and as long as not inconsistent with intrinsic use, to extrinsic evidence. *Interactive Gift Express Inc. v. Compuserve Inc.*, 59 USPQ2d 1401 (Fed..Cir. 2001), *Key Pharms. v. Hercon Lab Corp*, 48 USPQ2d 1911 (Fed. Cir. 1998). In this case the Naumann patent clearly distinguishes a container from a tube, as claimed, and recourse to extrinsic, dictionary definition should not be permitted, particularly as it is also inconsistent with the intrinsic use.

Intrinsically, the container contains and, on the contrary, a tube conveys as specifically claimed and also defined especially in The American Heritage Dictionary itself. The dictionary definition that a tube conveys ("... lead[s] extinguishing medium to the spray heads ..." as claimed) is contrary to the containing inherent to the container of the Naumann patent.

There is, therefore, no basis for rejection of claim 1 from the Naumann patent.

If there were a basis for rejecting the tube of claim 1 from the Naumann patent, the limitation of claim 1 to a long tube rebuts it. While long is relative, it is also relative in the Naumann patent wherein the tube 15 is two or more times the length of the container 13. The container 13 cannot carry an ordinary meaning of long, therefore, as required to meet the limitation of claim 1, when it is short relative to the tube shown in the patent itself. Short is not long, as claimed.

While the Appellant's own lexicographic definition of the long tube as primarily and about 1 km and more may not be precise, it is much longer than anything shown or suggested by the Naumann patent. To say that indefinite descriptions are not distinctions is to say that infinity is not long, which is untrue.

It is permissible to use differentiation between the naked long of claim 1 and the at least about 1 km of claim 14 to show that claim 1 does not require the long tube to be 1 km or more, but three-quarters of a km, half a km, or even less is still long relative to anything disclosed or suggested by the Naumann patent, as is also the case relative to the tube of at least two hundred meters of claim 13. Long even in terms of tens of meters (22.5 meters (not km), for example) is neither disclosed nor suggested by the Naumann patent, "... an object of this invention [being] to provide an explosively activated aerosol dispenser ..." (column 1,

lines 36 & 37). Recoil and danger from such Big Bertha 22.5 m of explosive "leading extinguishing medium to spray heads" as claimed is unthinkable.

Second Issue

Page 7 of the Examiner's Answer indicates that "MPEP 2111.03 requires that 'consisting essentially of' be construed equivalent to 'comprising'." Appellant disagrees.

MPEP 2111.03 provides:

The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. In re Herz, 537 F.2d 549, 551-552, 190 USPQ 461, 663 (CCPA 1976) (emphasis original)

That the extinguishing medium source consists essentially of a long tube is material, basic and novel to the claimed invention and, therefore, the transitional phrase "consisting essentially of" limits the claims. As the Patent Office admits by the rejection from art, the art may materially affect the novel characteristics but for the limitation on the scope of the claims by the transitional phrase "consisting essentially of" used according to MPEP 2111.03.

The Examiner's Answer (cf., page 8, lines 4 & 5) asserts that the receptacles of Disquattro are tubes. However, Disquattro does not disclose this by words or drawing.

The Diquattro patent does not disclose generic elements 16a-c, 12, 14 and 18 as asserted in the Examiner's Answer. It describes and shows in pictures distinct receptacles 16a-c, manifold 12, conduit 14 and inlet 18. While the Appellant concedes the conduit 14 (and 20 and outlet means 17) may be like the claimed tube, the inclusion of the receptacles 16a-c means that it does not consist essentially thereof, as claimed. Receptacles are not tubes.

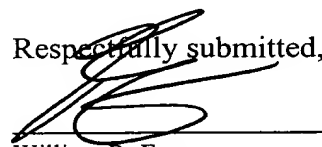
To the extent it may be appropriate to rely on a dictionary, the attached copy of Webster's New Universal Unabridged Dictionary for receptacle shows that container is a synonym, whereby the claimed tube is distinguished by conduction (leading extinguishing medium) as described above.

The Examiner's Answer asserts that it would have been obvious to have shaped the receptacles of Diquattro into a tube shape of appropriate length as taught by Lockwood, but shaping is not an issue. At issue is the elimination of a distinct and separate receptacle component of the Diquattro patent and no reason to do so is given.

Appellant's arguments directed to the distinguishing "long tube" have been given above and are not changed by the short tubes for "television" (cf., column 3, lines 48-49) or the "small boat" (cf., column 3, lines 59-60) of Lockwood. Short tubes for TV's or small boats are not long tubes for 22.5 m or tunnels, for example, as disclosed only in the application.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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recapitulate

rĕ-că-pit'ŭ-lāte, *v.i.* to repeat in brief what has been said previously.

Syn.—repeat, reiterate, summarize.

rĕ-că-pit'ŭ-lā-tion, *n.* 1. the act of recapitulating.

2. a summary or concise statement or enumeration of the principal points or facts in a preceding discourse, argument, essay, etc.

3. in biology, the repeating in an individual's development, especially in the embryo, of the evolutionary stages of the species.

4. in music, reprise.

rĕ-că-pit'ŭ-lā-tive, *a.* 1. of or pertaining to recapitulation; consisting of a summary.

2. recapitulating.

rĕ-că-pit'ŭ-lā-tŏr, *n.* one who recapitulates.

rĕ-că-pit'ŭ-lā-tŏ-ry, *a.* repeating again; containing or of the nature of recapitulation.

rĕ-căp'pĕr, *n.* a device or tool for applying fresh percussion caps or primers to cartridge shells when reloading them.

rĕ-căp'tion, *n.* the retaking of one's own goods, chattels, wife, or children, without force or violence, from one who has taken them and wrongfully detains them; reprisal.

writ of recaption; a writ to recover property taken by a second distraint, pending a replevin for a former distraint for the same rent or service.

rĕ-căp'tŏr, *n.* one who retakes or recaptures; one who takes a prize which was previously taken.

rĕ-căp'tŭre, *v.t.*; recaptured, *pl.*, *pp.*; recapturing, *ppr.* 1. to capture again; to retake, particularly a prize which had been previously taken.

2. to get by recapture (sense 2).

3. to remember.

rĕ-căp'tŭre, *n.* 1. a recapturing or being recaptured.

2. the taking by the government of a fixed portion of all earnings exceeding a certain percentage of property value.

3. that which is recaptured.

rĕ-că-r'ŭ-rĭ-ză-tion, *n.* the act of restoring carbon after decarburization.

rĕ-că-r'ŭ-rĭ-zĕ, *v.t.* to carbonize again; to restore carbon to, as to steel, after decarburization; as, to recarbonize iron in converting it into steel; also recarbonize.

rĕ-căst', *v.t.*; recast, *pl.*, *pp.*; recasting, *ppr.* 1. to cast, or mold, anew or again; as, to recast cannon.

2. to throw again or a second time.

3. to remodel and improve by changing form, style, or arrangement; to reconstruct; as, to recast an argument.

4. to compute a second time; to calculate or count again; as, to recast an account.

5. to provide a new cast for (a play).

rĕ-căst', *n.* 1. a recasting.

2. a new form produced by recasting; that which is remodeled or cast anew.

rec'che, *v.i.* and *v.t.* to reck. [Obs.]

rec'che-les, *a.* reckless. [Obs.]

rĕ-cĕde', *v.i.*; receded, *pl.*, *pp.*; receding, *ppr.*

1. to move back; to retreat; to fall away; as, the high water receded.

2. to withdraw a claim or pretension; to desist; to relinquish what had been proposed or asserted; usually with *from*; as, to recede from a demand, to recede from terms or propositions.

3. to slope backward; as, a receding forehead.

4. to become more distant, and hence indistinct; as, memories of childhood recede.

Syn.—retire, withdraw, retrograde.

rĕ-cĕde', *v.t.* to cede back; to grant or yield to a former possessor; as, to recede conquered territory.

rĕ-cĕ-dence, *n.* the act of receding; recession.

rĕ-cĕlpt' (-sĕt'), *n.* [OFr. *recette*, *recepte*; Fr. *recette*, from L. *receptus*, *pp.* of *recipere*, to receive.]

1. a recipe.

2. a receiving or being received.

3. a written acknowledgment that something has been received, as goods, money, etc.

4. (a) that which is received; (b) [*pl.*] the amount received.

5. the place of receiving. [Obs.]

Matthew, sitting at the *recepti* of custom.

—Matt. ix. 9.

6. a reception; welcome; hospitality; as, the kind *recepti* of a friend. [Obs.]

7. power or capability of receiving; capacity. [Obs.]

A place of great *recepti*. —Evelyn.

8. admission; a taking in. [Obs.]

The most convenient place . . . for such *recepti* of learning. —Shak.

gross receipts; receipts from all sources; the entire receipts; opposed to *net receipts*, the sum remaining after deduction of all expenses.

return receipt; the receipt given a postmaster by the addressee of registered mail, which is returned by him to the sender.

Syn.—acknowledgment, voucher.

rĕ-cĕlpt' (-sĕt'), *v.t.*; receipted, *pl.*, *pp.*; receipting, *ppr.* 1. to give a receipt for; as, to receipt goods delivered by a sheriff.

2. to write or stamp a receipt on; to mark (a bill) paid.

rĕ-cĕlpt', *v.i.* to give a receipt, as for money paid.

rĕ-cĕlpt'ă-ble, *a.* capable of being receipted.

rĕ-cĕlpt' book, a book containing blank forms for making out receipts.

rĕ-cĕlpt'ment, *n.* in old English law, the act of willfully or knowingly harboring a felon.

rĕ-cĕlpt'ŏr, *n.* a person who receipts; specifically, in law, one who receipts as bailee for property which has been taken by the sheriff.

rĕ-cĕlv'ă-bil'ity, *n.* the quality or state of being receivable.

rĕ-cĕlv'ă-ble, *a.* [ME. *resceivable*; Anglo-Fr.; OFr. *recevable*; also from *receive* and *able*.]

1. that can be received.

2. due; requiring payment.

3. suitable for acceptance.

rĕ-cĕlv'ă-ble-ness, *n.* same as *receivability*.

rĕ-cĕlv'ă-bleŭ (-blz), *n.pl.* accounts or bills receivable.

rĕ-cĕlve', *v.t.*; received, *pl.*, *pp.*; receiving, *ppr.* [OFr. *recevoir*; Fr. *recevoir*, from L. *recipere*, to receive; *re-*, back, and *capere*, to take.]

1. to take into one's possession (something given, offered, sent, etc.); to get; accept; acquire.

2. to encounter; experience; as, she received much acclaim.

3. to undergo; submit to; suffer; have inflicted on one; as, he received punishment.

4. to bear; to take the effect or force of; as, all four wheels receive the weight equally.

5. to take from another by hearing or listening; as, his confession was received by the priest.

6. to apprehend mentally; to get knowledge of or information about; to learn; as, they received the news.

7. to accept mentally as authentic, valid, etc.

8. (a) to let enter; admit; (b) to have room for; hold; contain; as, a cistern receives rain water.

9. to give admittance to or greet (visitors, guests, etc.).

10. to take (goods) from a thief, knowing them to be stolen.

Syn.—accept, admit, obtain, secure, take, hold.—To receive describes simply the act of taking; to *accept*, the taking cordially or for the purpose for which a thing is offered.

rĕ-cĕlve', *v.t.* 1. to get, accept, take, or acquire something; to be a recipient.

2. to receive guests or visitors; to be a host.

3. in radio and television, to convert incoming electromagnetic waves into sound or light, thus reproducing the sounds or images being transmitted.

4. in religious usage, to receive the Eucharist.

5. in tennis, etc., to return, or prepare to return, a served ball; to be the striker.

rĕ-cĕlv'ed-ness, *n.* the quality or state of being generally received, allowed, or acknowledged; general allowance. [Rare.]

rĕ-cĕlv'ĕr, *n.* 1. a person who receives; specifically, (a) a person who officially receives money, etc. for others; a collector; a treasurer; (b) a person who knowingly receives stolen goods for gain or concealment; a fence; (c) in baseball, a catcher; (d) in law, a person appointed by a court to administer or hold in trust property in bankruptcy or in a lawsuit.

2. a thing that receives; specifically, (a) a receptacle; especially, in chemistry, a receptacle connected with a retort, tube, etc., into which a distilled product passes; (b) an apparatus or device for receiving electrical waves, signals, etc. and converting them into sound or light, as a radio or television receiving set, or that part of a telephone which is held to the ear; (c) the glass receptacle on the table of an air pump; (d) a vessel which is adapted to collect or contain gas; (e) a sheet iron vessel lined with firebricks and clay from which the melted iron in a foundry is conducted into the mold; it also acts as a receptacle for large

quantities of melted iron of fifteen or twenty tons weight which exceed the capacity of the foundry ladles.

exhausted receiver; the receiver, as of an air pump, from which the air has been pumped out.

intermediate receiver; a vessel or casing employed on some compound steam engines as a steam chamber or reservoir between the high- and low-pressure cylinders. It is rendered necessary when the cranks of the two cylinders are set at right angles to each other, so that when one piston is at full the other is at mid-stroke. Its effect is also to equalize the back pressure in the high-pressure cylinder and to diminish the variations in its temperature.

rĕ-cĕlv'ĕr-gen'ĕr-ă-l, *n.*; *pl.* **rĕ-cĕlv'ĕr-gen'ĕr-ă-l**, in some states and countries, an official in charge of the public revenues.

rĕ-cĕlv'ĕr-ship, *n.* in law, (a) the duties, office, or position of a receiver; (b) the state of being administered or held by a receiver.

rĕ-cĕlv'ing set, in radio and television, an apparatus for converting incoming electromagnetic waves into sound or light, thus reproducing the sounds or images being transmitted; a receiver.

rĕ-cĕlv'ing ship, a ship stationed in a harbor to receive recruits, who are ultimately to be transferred to the naval service.

rĕ-cĕn-cy, *n.* [L. *recens*, recent.] the quality or state of being recent.

rĕ-cense', *v.t.* [*re-* and L. *censere*, to count.] to review; to revise.

rĕ-cĕn'sion, *n.* 1. review; examination; enumeration. [Rare.]

2. a revision of a text, based on a critical examination of sources.

3. a text established by such a critical revision.

rĕ-cĕn'sion-ist, *n.* one who makes a recension.

rĕ-cĕnt, *a.* [Fr. *récent*, from L. *recens* (-entis), recent.]

1. done, made, etc. just before the present time; modern; new.

2. of a time just before the present.

3. [R-] in geology, designating or of the present epoch, extending from the close of the Pleistocene.

the Recent; the Recent Epoch.

rĕ-cĕnt-ly, *adv.* at a recent time; lately; not long since; as, recently received news, a town recently built.

rĕ-cĕnt-ness, *n.* the state or quality of being recent.

rĕ-cĕpt, *n.* [*re-*, again, and -*cept* as in *concept*.] in psychology, a mental image formed by successive sense impressions of the same or closely allied objects.

rĕ-cĕp'tă-ble, *n.* [Fr. *réceptacle*; L. *receptaculum*, from *recipere*, to receive.]

1. that which receives, admits, or contains things; a place or vessel in which anything is received and contained; a container; a repository.

2. in botany, the enlarged part of the stalk on which the flower grows; the torus. The term is used by botanists in different senses. Thus, it is used to signify the axis of the theca among ferns; that part of the ovium from which the ovula arise, commonly called the placenta; also, that part of the axis of a plant which bears the flowers when it is depressed in its development, so that it forms a flattened area over which the flowers are arranged, as in *Compositae*: this is called the *clinanthium*. A proper receptacle belongs only to one set of parts of fructification; a common receptacle bears several florets or distinct sets of parts of fructification. Among the coarser algae, the term is applied to those podlike bodies which contain spores.



1a. hollow receptacle of *Malvastrum*; 2a. dry receptacle of the rasp-berry, bearing fleshy ovary; 3a. succulent receptacle of the straw-berry, bearing dry ovary.

rĕ-cĕp-tag'ŭ-lăr, *a.* in botany, pertaining to or growing on a receptacle.

rĕ-cĕp-tag'ŭ-lĭte, *n.* a fossil organism belonging to the extinct family *Receptaculitidae*, found in the seas of the Silurian and Devonian periods. By many they have been classified as sponges.

rĕ-cĕp-tag'ŭ-lum, *n.*; *pl.* **rĕ-cĕp-tag'ŭ-lă**, in anatomy, a receptacle.